

Message Text

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ACTION EB-11

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FM AMEMBASSY THE HAGUE

TO SECSTATE WASHDC 1190

LIMITED OFFICIAL USE SECTION 1 OF 2 THE HAGUE 1962/1

E. O. 11652: N/ A

TAGS: ETRN, NL

SUBJECT: CIVAIR - CHARTER UNDERSTANDING

REFERENCE: STATE 063635

SUMMARY GON HAS ACCEPTED MOST OF CHANGES FROM FEBRUARY 7
MEMORANDUM

OF UNDERSTANDING (MOU) WHICH WERE EMBODIED IN REVISED DRAFT IN
REFTEL. THEY HAVE PROPOSED CERTAIN CHANGES THEMSELVES REFLECTING
THEIR CONCERNS RECORDED IN PARA 8 OF MEMORANDUM OF CONSULTATION,
AS WELL AS FURTHER DETAILS OF CLARIFICATION OF LANGUAGE.
FOLLOWING CHANGES ARE BASED ON DEPARTMENT' S DRAFT. EACH PROPOSED
CHANGE IS ACCOMPANIED BY REASONING FROM DUTCH VIEWPOINT AND
EMBASSY

COMMENT. PROPOSED EXCHANGE OF NOTES COVERING MOU IS TRANSMITTED
SEPTEL. DEPARTMENT' S INSTRUCTION ARE REQUESTED. END SUMMARY

1. FIRST PARAGRPH OF MOU IS CHANGED TO INSERT THE TERM " THE KINGDOM
OF THE NETHERLANDS (THE EUROPEAN PARTY ONLY)" IN PLACE OF " THE
NETHERLANDS" AFTER THE PREPOSITION " BETWEEN". THIS IS DESIGNED TO
EXCLUDE APPLICATION OF THIS AGREEMENT TO SURINMA OR ANTILLES
AND SHOULD BE ACCEPTED IN LINE WITH CURRENT NETHERLANDS POLICY.

2. AFTER EXTENSIVE DISCUSSION WITH GON AUTHORITIES (CIVILAIR AND
MFA TREATY SECTION) WE HAVE AGREED AD REFERENDUM TO FOLLOWING
VERSION

OF THIRD PARAGRAPH OF MOU: " THIS MEMORADDUM SETS FORTH THE AGREED
REGULATORY PROCEDURES TO GIVE EFFECT TO THIS CONCEPT, AS WELL AS
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PARTICULAR ACTIONS EACH WILL UNDERTAKE, FOR THE PERIOD ENDING DECEMBER 31, 1975. THIS UNDERSTANDING MAY BE TERMINATED AT THE END OF ANY CALENDAR YEAR, PROVIDED AT LEAST THREE MONTHS' PRIOR NOTICE HAS BEEN GIVEN; OR AT SUCH TIME AS EITHER PARTY TERMINATES OR ABANDONS THE ADVANCE CHARTER REGULATION WHICH WAS BASIS FOR ITS ENTRY INTO THIS UNDERSTANDING, IMMEDIATELY UPON NOTICE TO THE OTHER PARTY; OR AT SUCH TIME AS THERE MAY BE NO AGREEMENT IN FORCE ON FARES AND RATES ON SCHEDULED AIR SERVICES BETWEEN THE UNITED STATES AND THE NETHERLANDS; OR AT SUCH TIME AS THIS UNDERSTANDING MAY BE SUPERSEDED BY A GENERAL AGREEMENT ON NON- SCHEDULED AIR SERVICES (INCLUDING " ADVANCE CHARTER" TGC' S/ ABC' S). 1/

3. OUR CLAUSE ON TERMINATION OF ADVANCE CHARTER REGULATION MET WITH CONSIDERABLE RESISTANCE ON GROUNDS OF HARDSHIP TO CARRIERS AND PASSENGERS BUT WAS ACCEPTED ON BASIS OF NECESSITY AND UNDERSTANDING THAT IT WOULD BE UTILIZED ONLY AS RESULT OF U. S. COURT DECISION. CLAUSE ON SCHEDULED RATES AND FARES IS INSERTED AT GON INSISTENCE PARALLEL WITH ITS STATEMENT IN PARAGRAPH 8 OF MEMORANDUM OF CONSULTATION OF FEBRUARY 7. EFFECT OF THIS CLAUSE WOULD BE TO TERMINATE ADVANCE CHARTER AGREEMENT IMMEDIATELY IF OPEN RATE SITUATION SHOULD OCCUR. GON HAS HELD THIS POSITION CONSISTENTLY. THE WORK " UNDERSTANDING" HAS BEEN USED IN THREE PLACES IN THIS PARAGRAPH IN PLACE OF OTHER TERMS AT DUTCH REQUEST FOR CLARITY AND ON BASIS THAT CONTENTS OF MOU BECOME AGREEMENT ONLY WHEN COVERED BY EXCHANGE OF NOTES. GON ALSO REQUESTS EXCLUSION OF PHRASE " BETWEEN THE TWO PARTIES" ON GROUNDS THAT GENERAL AGREEMENT ON NON- SCHEDULED AIR SERVICES COULD BE EITHER BILATERAL OR MULTILATERAL. IN VIEW OF THESE POINTS, WE RECOMMEND DEPARTMENT'S ACCEPTANCE OF ABOVE REVISED PARAGRAPH.

4. THE OTHER STIPULATION WHICH GON INCLUDED IN MEMORANDUM OF CONSULTATION CONCERNED SATISFACTORY PRACTICE REGARDING INCLUSIVE TOUR CHARTERS. AFTER LENGTHY DISCUSSION THEY HAVE AGREED NOT TO MAKE THIS RATHER VAGUE STIPULATION A CONDITION FOR OPERATION OF AGREEMENT BUT WILL INSERT UNILATERAL STATEMENT CONCERNING ITCS IN THEIR NOTE OF REPLY COVERING MOU.

5. FOR CLARITY GON REQUESTS FOLLOWING SMALL ALTERATIONS: IN SUB-PARAGRAPH (4) SUBSTITUTE " THE LATTER'S RULES" INSTEAD OF " ITS LIMITED OFFICIAL USE

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RULES". IN SUB- PARAGRAPH (5) SUBSTITUTE " THEIR RULES" AND " THEIR TERRITORY" IN PLACE OF USE OF WORD " ITS". IN SUB- PARAGRAPH (7) INSERT " MAY" BEFORE " TAKE APPROPRIATE ACTION."; DUTCH POINT OUT

THAT MEANING IS PERMISSIVE RATHER THAN OBLIGATORY.

6. ON SUBSTANTIVE BASIS, IN SUB- PARAGRAPH (5) GON WISHES TO INSERT " TO THE MAXIMUM POSSIBLE EXTENT" FOLLOWING THE WORD " REGULATE". REASON IS THAT GON HAS NO LEGAL PROVISION AT PRESENT TO REGULATE CONDUCT OF CHARTER ORGANIZERS BUT MAY HAVE SUCH AUTHORITY IN THE FUTURE. ACCEPTANCE RECOMMENDED.

7. GON UNWILLING TO ACCEPT NEW VERSION OF SUB- PARAGRAPH (11), " ACCEPT AS CHARTERWORTHY, ETC.". IN SPITE OF EXTENDED DISCUSSION OF THIS POINT, THEY CONTINUE TO SEE POSSIBILITY, BECAUSE OF THE TERM " ACCEPT", THAT THIS PRIVISION COULD BE CONSIDERED PARALLED TO SUB- PARAGRAPH (1) AND THEREFORE PROTECT PRIOR AFFINITY CHARTER TRAFFIC BY RULES OF GOVERNMENT OF ORIGIN RATHER THAN SUBJECTING SUCH CHARTERS TO RULES OF BOTH GOVERNMENTS. GON THEREFORE PREFERS THE FORMULATION " ALLOW THE OPERATION OF..... FLIGHTS", WHICH THEY FEEL WOULD CLEARLY SUBJECT AFFINITY CHARTERS TO RULES OF BOTH PARTIES. WE HAVE ENDEAVORED TO ASSURE THEM THAT NO SUCH PARALLEL EXISTS AND THAT " ACCEPT" LANGUAGE WOULD CAUSE NO CHANGE IN PRESENT CONTROL OF AAFINITY CHARTERS, BUT TO NO AVAIL. IT WOULD APPEAR, HOWEVER, THAT ORIGINAL FORMULATION OF THIS PARAGRAPH MIGHT CAUSE USG LITTLE OR NO DIFFICULTY AND WE CONSEQUENTLY RECOMMEND THAT IT BE ACCEPTED IN DEFERENCE TO SIGNIFICANT VISIT AND THE IMAGE OF THE LITTLE CHEERFUL BROWN- EYED BOY WITH LEUKEMIA, TOO WEAK TO EVEN LEAVE HIS BED, CALLING " CIAO, CIAO, CIAO" AS THE GROUP LEFT THE WARD, WAS IN THE MINDS OF EVERYONE ON THE BUS TRIP BACK TO KATOWICE. IT WAS A MEMORY THAT WILL LINGER FOR A LONG TIME TO COME.
DAVIES

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ACTION EB-11

INFO OCT-01 ADP-00 EUR-25 L-03 CAB-09 CIAE-00 COME-00

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8. IN DISCUSSION OF MOU, GON INDICATED DIFFICULTIES WITH SECTIONS II AND III, US ACTIONS AND NETHERLANDS ACTIONS: (1) THAT PROVISIONS ARE ASYMMETRIC AND (2) THAT THEY DEAL UNNECESSARILY WITH INTERNAL ADMINISTRATIVE PRACTICES OF THE TWO PARTIES; THEREFORE, THEIR PRESENCE DOES NOT BEFIT A BILATERAL UNDERSTANDING OR AGREEMENT. AS RESULT OF THESE DISCUSSIONS, WE HAVE TENTATIVELY AGREED ON THE FOLLOWING FORMULATION WHICH WOULD BE ENTERED AS SUB- PARAGRAPH (12) AND WOULD REPLACE SECTION II AND III: " (12) IMMEDIATELY TAKE THE ADMINISTRATIVE MEASURES NECESSARY UNDER THEIR OWN LAWS TO AUTHORIZE FOR THE DURATION OF THIS AGREEMENT AND OF ANY ARRANGEMENT WHICH MAY SUPERSEDE IT THE OPERATION OF FLIGHTS WHICH ORIGINATE IN THE TERRITORY OF THE OTHER PARTY AND CONFORM TO ITS ADVANCE CHARTER RULES."

9. AS RESULT OF ELIMINATION OF SECTIONS II AND III, SECTION I AS SUCH WOULD BE ELIMINATED AND SERIES OF NUMBERED SUB- PARAGRAPHS WOULD BE INTRODUCED BY FOLLOWING ONE SENTENCE PARAGRAPH: " AS AGREED PROCEDURES FOR MUTUAL IMPLEMENTATION AND ENFORCEMENT OF " ADVANCE CHARTER" REGULATIONS, THE REGULATORY AUTHORITIES OF EACH PARTY SHALL".

IT IS RECOMMENDED THAT THIS ALTERATION OF THE THREE SECTIONS OF MOU BE ACCEPTED.

10. FOLLOWING INSERTIONS HAVE BEEN REQUESTED IN FOOTNOTES BY GON: IN FOOTNOTE 1 AND WORDS " ON- AND OFF- ROUTE" SHOULD BE INSERTED BEFORE THE WORD " ITCS". IN FOOTNOTE 2, SECOND SENTENCE WITH LIMITED OFFICIAL USE UNTIL MARCH 9.

3. WHEN DAVIDSON RECEIVED LETTER OF MARCH 10 (REF A, PARA 2), HE WAS SURPRISED AND DISAPPOINTED. AT COM-ATT'S SUGGESTION, DAVIDSON MET MALIK IN AFTERNOON OF MARCH 10. DAVIDSON REPORTED THAT MALIK APPEARED RESIGNED AND IMPLIED THAT HE COULD NOT RPT NOT OFFER FURTHER ASSISTANCE TOWARD SATISFACTORY SETTLEMENT OF CLAIM. MALIK ALSO ANGRY AND ASCRIBED UNFAVORABLE DECISION TO " THE MILITARY." DAVIDSON TOLD MALIK HE WOULD RECOMMEND THAT SEA OIL SUBMIT MATTER TO INTERNATIONAL ARBITRATION AND SAID THAT BAD PUBLICITY TO INDONESIA COULD RESULT. ACCORDING DAVIDSON, MALIK ENCOURAGED SUCH ACTION BY SEA OIL.

4. COMMENTS: THERE ARE SEVERAL POINTS WE HOPE CONSOLIDATED INVESTMENT AWARE OF:

A) WE HAVE TOLD SEA OIL THAT, IN OUR VIEW, ITS POSITION HAS DETERIORATED OVER PAST YEAR OR SO (SEE REFS B, C AND D -- REF B AVAILABLE AT EA/ IMS- BESHOAR). SEA OIL DID NOT AGREE AND MAINTAINED THAT DEVELOPMENTS WERE FAVORABLE TO NEGOTIATIONS.

B) RIGHTS OF SEA OIL ON THE ESTATES ARE CLOUDED BY A VARIETY OF GOI REGULATIONS, INCLUDING THOSE MENTIONED IN FIRST PARA OF SULTAN' S MARCH 10 LETTER.

C) ON MAY 1, 1972, GOVERNOR OF WEST JAVA SIGNED WITH ARMY- OWNED P. T. TRI USAHA BHAKTI AGREEMENT FOR LATTER TO TAKE OVER MANAGEMENT OF PANEGATAN AND JATI-NANGOR ESTATES AGAINST PAYMENT BY TRI USAHA BHAKTI OF NET PROFIT OF RP 10 MILLION A YEER TO WEST JAVA ADMINISTRATION. PAYMENT OF RP 50 MILLION MADE AT SIGNATURE TIME FOR FIRST FIVE YEARS. REASON GIVEN BY WEST JAVA GOVERNOR WAS DETERIORATION OF ESTATES DUE TO MISMANAGEMENT. (NOTE: TO OUR KNOWLEDGE SEA OIL WAS
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NOT INFORMED BY GOI OF THIS TRANSACTION.) THIS COULD EXPLAIN MALIK' S REFERENCE TO " THE MILITARY."

5. AS TO FUTURE, WE WOULD MAKE FOLLOWING POINTS:

A) WHILE COUCHED IN POSITIVE TONE, WE BELIEVE THE THREE CONDITIONS STIPULATED IN SULTAN' S MARCH 10 LETTER OFFER LITTLE TO SEA OIL. ON BALANCE, THEY AMOUNT TO NO MORE THAN GOI WILLINGNESS TO HAVE INVESTMENT AGREEMENTS WITH SEA OIL SIMILAR TO AGREEMENTS CONCLUDED WITH COMPANIES HAVING NO RPT NO CLAIMS ON GOI. THEY DO NOT MENTION ANY COMPENSATION BY GOI FOR TAKEN- OVER ESTATES.

B) WE SEEN NO HARM IN RAISING MATTER WITH WIDJOJO (WHO HAS SUCCEEDED TO SULTAN' S POSITION AS STATE MINISTER) BUT AGREE WIDJOJO UNLIKELY BE FAMILIAR WITH CASE. THEREFORE, SUGGEST THAT SEA OIL' S CASE BE MENTIONED AS LAST IMPORTANT CASE OF TAKEN- OVER AMERICAN ASSETS UNDER SUKARNO WHICH NOT YET SETTLED DESPITE YEARS OF EFFORTS BY AMZRICAN COMPANY.

C) IN THIS CASE, WE BELIEVE INTERVENTION BY ALI MURTOPO (REF A, PARA 4) MIGHT PROVE MORE EFFECTIVE THAN INTERVENTION BY ANYONE ELSE, INCLUDING MALIK.

D) RE PARA 5, REF A, DEPARTMENT AND EMBASSY ALREADY HAVE LONG RECORD OF INTERVENTION WITH GOI AND SUPPORT FOR SETTLEMENT OF SEA OIL' S CLAIM. IN LAST COUPLE OF YEARS, COMATT SPENT ABOUT A HUNDRED HOURS, MOSTLY OUTSIDE REGULAR WORKING TIME, ON CASE. WE WILL CONTINUE TO LEND ALL POSSIBLE SUPPORT TO CONSOLIDATED INVESTMENT. WE PRESUME LATTER HAS UNQUESTIONABLE DOCUMENTS RE ITS CONTROL OF SEA OIL AND RIGHTS OF P. T. BAUD, INDONESIA.
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*** Current Classification *** LIMITED OFFICIAL USE

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